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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1961.

No. 326

VIRGIL BALL, County Treasurer,
Plaintiff-Appellee,

vs.

DELINQUENT LANDS, ETC., 1958;
IN THE MATTER OF APPLICATION FOR JUDGMENT
BY THE COUNTY COLLECTOR,
TAX OBJECTIONS FOR THE YEAR 1958
CLAUDE W. ANDERSON, *et al.,*
Objectors-Appellants.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION TO DISMISS APPEAL.

ORAL C. KOST,
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and
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Assistant State's Attorneys,
Attorneys for Appellee.

CHAMPLIN-SHEALY COMPANY, CHICAGO 60

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Now comes Virgil Ball, County Treasurer, Plaintiff-Appellee herein, and moves the Court that said application may be dismissed and assigns as reasons therefor the following:

1. That no substantial Federal question is involved.

2. That although the constitutionality of a statute of the State of Illinois has been raised upon this appeal, that it is raised for the first time in this Court and was not raised in the trial court nor the Illinois Supreme Court.

STATEMENT

Appellants rely upon sub-section 2 of Section 1257 of Title 28 of the Judicial Code of the United States to sustain their rights of petition to appeal. This subsection requires that the validity of a statute of the State be drawn in question and a decision by the State Court is in favor of its validity. The record in this case will disclose that at no time did the appellants question the validity of any statute and more particularly Section 584 of Chapter 120, Illinois Revised Statutes 1957 edition. Their objection upon this ground was "That the assessment is void, because ..... prop. rty is taken by the procedure of such assessment, without due process of law." The objections and the matters raised on appeal to the Illinois Supreme Court all went to the failure upon the part of the Supervisor of Assessment to publish within what was claimed to be proper time or because the Board of Review remained in session after the legal date for adjournment. At no time was the validity of Section 584 or any other statute raised in the trial court or the Illinois Supreme Court. Therefore the present attempt to raise the question of the constitutionality of Section 584 or any other Illinois Statute does not come within the scope of sub-section 2 of Section 1257 of Title 28 as above set forth.

The Court's attention is invited to Paragraph 2 on Page 5 of the Jurisdictional Statement in which appellants attempt to raise a further question of the constitutionality of the assessment statutes by inferring that the statute and opinion has been construed to be mandatory to require the assessments of personal property before July 10th in *any* assessment year but that it is not mandatory as to real property in the quadrennial years. There is no basis for this position either in the statute or in the construction thereof by the Illinois Supreme Court. Section 584 clearly states that in the years of the quadrennial assessment the Supervisor of Assessments shall publish a full and complete list of the assessment of real *and personal property*. That no place in the opinion of the Illinois Supreme Court is it stated that the publication of personal property must be made by July 10th in the quadrennial year but the inference is clear that they held that the statute simply means that in the quadrennial year the assessments of real and *personal* shall be made after the assessments are completed. The opinion of the Illinois Supreme Court only held that the publication of assessments in non-quadrennial years shall be on or before July 10th. The reason behind this statute is very obvious as the work of the Supervisor of Assessments is greatly increased in the year of the quadrennial assessments of real estate and for that reason he is given additional time within which to complete his assessments of real and personal property and to publish the same. It is therefore respectfully suggested to the Court that all of the argument of counsel in the jurisdictional statement as to the alleged discrimination between real and personal property is without any basis whatsoever.

The only real basis for the objections of the appellants was the fact that because of alleged late publications that

they did not have the right to appear before a legally constituted Board of Review. The record discloses and the opinion recognizes the fact that the Board of Review did legally remain in session for an ample length of time after publication to hear all objections, and that all objections filed were acted upon. There is no claim at any time by any of the appellants that they were denied a hearing or that they did not have a full and complete opportunity to be heard by the Board of Review after the publication of the assessment lists. It is respectfully suggested that all of the objections went to the interpretation of local statutes by the State Supreme Court and that under the language of all of the cases submitted by appellants the only requirement of the Fourteenth Amendment is that at some place in the assessing procedure the taxpayer be given an opportunity to appear and object to the assessment of his tax. This opportunity was secured to them in this case and there is no claim that they did not have the opportunity.

SUMMARY.

It is therefore respectfully submitted by appellee that the petition to appeal may be dismissed as the appellants at no time in the Trial Court or Illinois Supreme Court ever raised the question of the constitutionality of any statute but only as to the procedures employed thereunder and that therefore they do not come within the provisions permitting an appeal in such instance; that furthermore the other matters of a general nature in which it is claimed that due process was denied are not sufficient to constitute

a substantial Federal question either under the Fourteenth Amendment or any other constitutional provision of the United States of America.

Respectfully submitted,

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